



CIRCULAR

STATE OF NEW JERSEY

DEPARTMENT OF THE TREASURY

NO.: 11-10-DPP	ORIGINATING AGENCY: DIVISION OF PURCHASE AND PROPERTY	PAGE 1 OF 7
EFFECTIVE DATE: 01-24-11	EXPIRATION DATE: INDEFINITE	SUPERSEDES: 11-02-DPP
SUBJECT: DELEGATED PURCHASING AUTHORITY (DPA)		
ATTENTION: DIRECTORS OF ADMINISTRATION AND EXECUTIVE BRANCH PROCUREMENT OFFICERS		
FOR INFORMATION CONTACT: ASSISTANT DIRECTOR, CONTRACT COMPLIANCE AND AUDIT UNIT		PHONE: (609) 292-5400 E-MAIL: ccau@treas.state.nj.us

I. PURPOSE

Pursuant to N.J.S.A. 52:25-23, the Director, Division of Purchase and Property (DPP) may delegate certain purchases to State agencies. Delegated Purchasing Authority (DPA) procedures and guidelines have been revised. The purpose of this Circular is to establish the policies and procedures for agencies to follow for procurements that do not exceed the DPA maximum.

This Circular is to be used in conjunction with the other Treasury Circulars and policy directives referenced herein.

II. POLICY

Effective July 1, 2010, the DPA threshold was increased from \$29,000 to \$36,000. For the purpose of this Circular, "state agency" or "agency" refers to the organization within a department described by a four-digit organizational code in the account number as delineated in the annual Appropriations Handbook. For other units of government (e.g., "in but not of" commissions) for which there is only one organizational code, or the organizational code does not accurately reflect the managerial span of control as it relates to procurement, an exemption to this definition of "state agency" or "agency" may be requested from the Director, DPP, to permit the administration of the purchase function at more than one level.

A DPA purchase is defined as a purchase transaction that cannot be procured through one of the following four primary contracting methods: (1) a State contract, (2) the State Distribution and Support Services Center (DSS), (3) the Bureau of State Use Industries (DEPTCOR) or (4) the Central non-profit agency CNA/ACCSES NJ (CNA), AND does not exceed the DPA threshold of \$36,000. Pursuant to N.J.S.A. 52:25-23(a), purchases or contracts exceeding the DPA threshold **shall not** be divided by vendor, dollar amount or items to circumvent the dollar limit imposed. Similar items as defined by the three-digit commodity class code (<http://www.nj.gov/cgi-bin/treas/purchase/commcodes.pl>) should be combined, where possible, as one quote to increase purchasing volume, leading the way to potentially lower prices.

Agencies may not circumvent any one of the four primary contracting methods identified above. If a similar item or service is available under State contract or available from DSS, DEPTCOR or CNA, AND

the similar item or service addresses the primary performance and/or functionality requirements, then DPA should not be utilized. Minor differences in functionality and/or performance between the desired item or service and a similar item or service under State contract or available from DSS, DEPTCOR or CNA are not valid reasons for purchasing such item or service via DPA.

For items or services that are not covered by one of these primary contracting methods, an agency should identify its purchase requirements and determine its anticipated fiscal year needs based upon its procurement history. If the anticipated fiscal year volume for a product or service exceeds \$36,000, the agency must request the Purchase Bureau to perform the procurement. However, if the ANTICIPATED FISCAL YEAR VOLUME for an item or service is \$36,000 or less, the agency can properly utilize DPA for the purchase of that item or service.

Prior to issuing purchase orders, it will be the agency's responsibility to verify the availability of funding for the purchase and to verify that the item or service is not available under a State contract or from DSS, DEPTCOR or CNA.

III. PROCEDURES

- A. \$1,000 or LESS: A "LDO"-agency/"Micro-purchase" order can be issued without price competition for a purchase less than or equal to \$1,000, i.e., no competitive quotes or vendor forms are required for purchases of \$1,000 or less.
- B. OVER \$1,000 to \$17,500: Three telephone quotations (Form PB-119 or an equivalent form with the same information contained on the PB-119), internet quotations, e-mail quotations or signed fax quotations are required for all transactions over \$1,000 and up to \$17,500.
 - 1. Record telephone quotations on Form PB-119 or on an equivalent document and include the completed PB-119 Form in the agency DPA file along with a copy of the DPA-agency purchase order.
 - 2. For all telephone solicitations, it is the responsibility of the agency to ensure that competition is conducted in a fair and even manner. All vendors shall be provided with the same terms and conditions, including the same information on the proposed service or good needed, to submit quotes.
 - 3. Internet pricing should, whenever possible, utilize a pricing comparison engine that lists item costs by vendor in ascending order. If the agency does not utilize Form PB-119 to record internet pricing, then all the information required on the PB-119 must also be detailed on the received quotation. In addition, for internet pricing or quotations, the agency must print out and retain in its file the quote or pricing obtained from each vendor site solicited. The agency procurement officer shall also note on the printed quote the time and date such pricing was obtained and shall sign off on the printed quote to verify the date and time.
 - 4. For services, including consultant services, the agency must secure written verification from the selected vendor, prior to the start of the contract, as to total cost, the deliverable(s) and timeframe(s) for the delivery of the deliverable(s). Such verification must be included in the agency's DPA file.
- C. OVER \$17,500 to \$36,000: Solicit a minimum of three sealed written quotes for purchases greater than \$17,500 but less than \$36,000 using Form PB-120, "Agency Request for Proposal." Each

* In the case of a DPA transaction for less than \$1,000, the agency is encouraged to process a "limited dollar order" (LDO) document type in MACS-E. A LDO transaction requires no paperwork, including that there is no purchase order printed. The order is placed with the vendor (verbally, email, fax or written) and the only paperwork required to complete the transaction is the vendor's invoice for prompt payment.

agency is encouraged to place agency-solicited sealed requests on its website to increase competition for needed goods and services. The agency must obtain, process and file sealed written quotes as follows:

1. Forward "Agency Request for Proposal" simultaneously to a minimum of three vendors. Allow sufficient time from the forwarding date of the Agency Request for Proposal to the vendors for the review, completion and return of proposals by the vendors. The return date and hour should be clearly shown in the Agency Request for Proposal. No sealed written quotes can be accepted if received by the agency after the return date and hour noted on the Agency Request for Proposal.
2. Enclose a return envelope with the Agency Request for Proposal sent to each vendor. Type the quote due date (month, day, and year) and your agency reference number on the face of the envelope in the upper left-hand corner, below the agency return address.
3. For emergency procurements as defined in section IV.F, telephone quotations, internet pricing or quotations, signed fax quotes or e-mailed quotes may be accepted in place of sealed written quotes. The signed fax quote or e-mailed quote should include the agency reference number. Vendors should be advised that signed fax quotes must include the back page of the Form PB-120, i.e., the State of New Jersey Terms and Conditions, and that all pages of the signed fax quote, including the back page of Form PB-120, must be signed by the vendor.
4. It is the responsibility of the agency to establish internal control procedures for the acceptance, security, review and evaluation of sealed written quotes, and also for signed faxed quotes, e-mailed quotes or internet pricing when such procurements are permitted under this Circular. Such procedures must include time stamping of the exterior of sealed written quotes and the first page of signed fax quotes upon receipt; keeping of all sealed written quotes and signed faxed quotes in a secure location; no review of any sealed written quote or signed fax until the time specified for submittal has passed; and no acceptance of a sealed written quote or signed fax quote after the time specified for submittal has passed. For e-mailed quotes, the agency shall immediately print a copy of the received e-mail quote, which will include the date and time of receipt.
5. Sealed quotes should be opened and reviewed at the time specified in the Agency Request for Proposal for submission of sealed quotes.
6. All unsigned quotes shall be rejected, whether by sealed written or signed fax quotation.
7. Agencies shall not alter sealed written quotes, signed fax quotes or e-mailed quotes.

IV. GENERAL PROCUREMENT POLICIES AND PROCEDURES

- A. **ONE RESPONSE TO A SOLICITATION:** A single response to a DPA solicitation for a purchase of greater than \$1,000 but less than \$36,000 does not preclude the issuance of a purchase order to the single respondent. A DPA agency purchase order may be issued to a single respondent, provided the agency has contacted the appropriate number of bona fide vendors as previously outlined and the quote received from the single respondent is responsive, i.e., fully complies with the agency's specifications and the State of New Jersey Terms and Conditions, as shown on the reverse side of Form PB-120. The Agency Approval Officer must prepare a memorandum to the DPA file to this effect.
- B. **QUOTE EVALUATION:** Generally, the vendor with the lowest price is entitled to the award, provided the lowest vendor's proposal fully conforms to the terms and conditions of the agency's specifications and the State of New Jersey Terms and Conditions, as shown on the reverse side of Form PB-120. Should the lowest quote fail to fully conform, the quote shall be deemed "non-responsive" and shall be ineligible for award. Award can be made only to a "responsive" vendor, i.e., a vendor whose quote fully complies with the terms and the conditions of the agency's specifications and the State of New

Jersey Terms and Conditions. However, an agency can "bypass" the lowest responsive vendor in favor of a higher priced responsive vendor, if the agency determines that the higher priced responsive vendor's quote better serves the State's interest. If the agency makes an award to a vendor other than the low cost responsive vendor, the agency must document with substantive justification the selection of the selected vendor. In the event of either a finding that a vendor's quote is non-responsive or a bypass, the Agency Approval Officer must notify the non-responsive vendor and/or any bypassed vendor in writing of the reason for the non-responsive determination or bypass determination.

- C. **TIE QUOTES:** Should identical pricing be offered by more than one responsive vendor, and the quality of the item or service offered is identical, the agency shall, with full documentation of its actions, apply the following factors, listed in order of priority, in determining the vendor to which the award will be made:
1. History of vendor performance, as evidenced by the formal complaints on record at the Purchase Bureau, or a record of outstanding performance;
 2. Usable cash or volume-based discount that renders one quote more favorably priced;
 3. Delivery advantage – considering time, distance, convenience and vendor facilities;
 4. Active registration as a small business at the time of quote opening, and;
 5. In-State location.
- D. **SOLE SOURCE VENDORS:** If only one source can provide the item or service, a memorandum of sole source justification must be written and signed by the Agency Approval Officer. The determination is relatively simple: a demonstrable need which can be satisfied by only one vendor. A vendor that is "best qualified" is not the only vendor who can provide the item or service.
- E. **BRAND NAMES:** Any reference to a brand name must be followed by the language "or functional equivalent" whenever telephone, sealed written, signed fax, internet pricing or e-mailed quotations are sought. The agency must provide relevant and appropriate specifications to all vendors to permit the submission of competitive proposals. It is essential that all vendors be given the same information to maintain an equal competitive footing among vendors.
- F. **EMERGENCY DPA PROCUREMENTS:** In cases of life, safety and health emergencies, when the public exigency requires the immediate delivery of the item or service and time does not permit competitive prices to be obtained from the required number of vendors, a single quotation is permitted. The agency may solicit quotes from a vendor employing the following procurement methods: telephone quotations, internet pricing or quotations, signed fax quotations, signed written quotations or e-mailed quotations. A memorandum of the particular public exigency that precluded the solicitation of quotations from the required number of vendors must be prepared and signed by the Agency Approval Officer and made part of the DPA file.
- G. **RECORD RETENTION/AUDIT:** Pursuant to N.J.S.A. 52:25-23(c), records of all purchases made shall be maintained by the agency and shall include proper documentation that the procurement was competitively awarded, where required. The agency shall make available to the Director, DPP, upon request, all documents relating to the solicitation and award of the procurement, including but not limited to, telephone and sealed written quotations, signed fax quotations, e-mailed quotations, internet pricing or quotations, and purchase orders. Files must be made available for public inspection upon request (under the supervision of a responsible agency employee) and retained for a period of seven (7) years. Files are also subject to audit by Treasury's Office of Management and Budget (OMB), the Office of Legislative Services and DPP's Contract Compliance and Audit Unit (CCAU). Agencies must maintain records showing that price competition was solicited from the

required number of vendors for all DPAs exceeding \$1,000, except those verified and documented as either emergencies or sole source by the agency.

- H. **AGENCY/VENDOR DISPUTE:** In the event of a protest or dispute between an agency and a vendor regarding a DPA procurement decision, the vendor shall be provided due process via review by the agency Director of Administration or Fiscal Officer. If the matter cannot be resolved by the agency, the Director, DPP, will conduct a review and make a determination in accordance with N.J.A.C. 17:12-3.
- I. **FORMS:** All forms, except Business Registration Certificates, are available on the DPP website. The agency must review all completed forms for completeness and acceptability. Questions relating to the acceptability of completed forms can be directed to the DPA contact identified within this Circular. All original forms, with the exception of the Affirmative Action Employee Information Report, shall be made part of the agency's DPA file for the particular procurement. The agency shall forward the original of the completed Affirmative Action Employee Information Report to the Department of the Treasury, Division of Public Contracts Equal Employment Opportunity Compliance, P.O. Box 209, 135 West Hanover Street, Trenton, New Jersey, 08625. A copy of the completed Affirmative Action Employee Information Report shall be made part of the agency's DPA file for the particular procurement.

Prior to finalization of a DPA purchase to a vendor, the vendor must complete:

1. Ownership Disclosure Form
2. A New Jersey Certificate of Employee Information or a copy of the Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program (Verification of Affirmative Action compliance may also be obtained through the VINP screen on MACS-E.)
3. MacBride Principles Certification (the separate form requirement is removed from DPP RFPs but is still required here).
4. Provide a copy of the vendor's Business Registration Certificate
5. Pay to Play Disclosure Certification: In addition, for all procurements exceeding \$17,500, whether singly or in the aggregate, the vendor must comply with N.J.S.A. 19:44A-20.13 et seq. (formerly known as Executive Order (EO) 134). If this provision is applicable to the procurement, the agency shall not issue a Purchase Order to the vendor until CCAU within DPP apprises the agency that the vendor is in compliance with N.J.S.A. 19:44A-20.13 et seq.
6. Source Disclosure Certification: For all procurements that are primarily for services, the vendors must comply with N.J.S.A. 52:34-13.2 (also known as EO 129) and file a source disclosure certification with the agency. It is the agency's responsibility to determine if the vendor complies with N.J.S.A. 52:34-13.2, i.e., that the vendor will provide the services within the United States.

In the alternate, the vendor may provide proof that such forms have been completed by the vendor and accepted by the State within six months of the procurement date, proof of which is a copy of the previously completed forms. All contractors must execute and date the Standard Terms and Conditions for DPA (PB-120).

- J. **PAYMENT:** It is the agency's responsibility to ensure that all goods and services received from the vendor conform to the requirements of the DPA. The agency must not pay for goods and services that are not delivered by the vendor or that fail to conform to the requirements of the DPA.

V. ADDITIONAL DPA LIMITS AND EXCEPTIONS

- A. **MOVING SERVICES:** (1) For moving services available under an existing State contract and totaling \$40,000 or less, the Using Agency must notify the Leasing Support Unit within the Division of Property Management and Construction (DPMC) and DPMC will coordinate the procurement. (2) Specialized moving services not available under an existing State contract may be purchased via DPA. (3)

Moving services exceeding the current DPA threshold of \$36,000 and not available under an existing State contract must be submitted to the Division of Purchase and Property as a requisition (PB-6), with prior written approval from DPMC, for advertisement as a public bid. (4) Moving services available through the State contract but for more than \$40,000 must be submitted to the Division of Purchase and Property as a requisition (PB-6), with prior written approval from DPMC, for advertisement as a public bid.

- B. **PROFESSIONAL AND CONSULTING SERVICES:** If the cost of these services exceeds the current DPA limit, the agency must consult the joint DPP-OMB-OIT Circular entitled "Professional Services: Review, Control, Monitoring, and Extensions".
- C. **INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS EQUIPMENT and SERVICES:** Information technology (IT) and telecommunications equipment and services not covered by State contract may be purchased by DPA as provided in this Circular. However, system purchases which individually total less than \$36,000 but in the aggregate total more than \$36,000 cannot be purchased by DPA. All IT procurements must conform to the Circulars entitled "Procurement of Information Technology (IT) Hardware, Software and Related Services" and "Moratorium on Procurements of Information Technology (IT) Hardware, Software and Related Services".
- D. **CELLULAR PHONES:** Cellular phone acquisitions or purchases must be made from existing State contracts. All cell phone acquisitions are also governed by the provisions of the Circular entitled "Assignment and Use of Cellular Wireless Devices".
- E. **PARKING SPACE RENTALS:** All parking space rentals must receive prior written approval from the Purchase Bureau and the State Parking Coordinator and be included on the Statewide Parking waiver.
- F. **RENTAL OF SPACE:** Office space rentals, with the approval of DPMC, may be purchased for a period up to twelve (12) consecutive months. However, the total fiscal year purchase shall not exceed \$36,000.
- G. **SEASONAL RENTALS:** Seasonal rentals may be acquired with approval by DPMC if the total fiscal year cost does not exceed \$10,000. Examples are boat slip rentals, race track rentals for the Sire Stakes, and temporary warehouse/storage space needs. Requests for approval for seasonal rentals exceeding the \$10,000 limit must be submitted to and approved in writing by DPMC *before the DPA procurement is executed*.
- H. **RENTALS OF EQUIPMENT:** Equipment rentals via DPA are permissible, with the exception of photocopiers and vehicles.
- I. **PHOTOCOPIERS:** All photocopying purchases or leases are excluded from the provisions of this Circular, i.e., photocopy equipment purchase or lease may not be accomplished via an agency's DPA.
- J. **VEHICLE PURCHASES:** All vehicle purchases are excluded from the provisions of this Circular.
- K. **STEEL SHELVING:** All steel shelving purchases are excluded from the provisions of this Circular. The agency must refer to the Circular entitled "Steel Shelving Review & Procurement Procedures".
- L. **PRINTING – NON-CONTRACT:** Agencies are permitted to develop specifications and purchase non-State contract printing via DPA, with the following caveat. For non-contract printing DPAs over \$17,500 and up to \$36,000, a requisition (PB-6) with supporting documentation must be submitted to the Purchase Bureau, to the attention of the Team Leader for Printing Services. The Printing Services Team will initiate the issuance of the purchase order. The procurement request(s) will also be reviewed to ascertain the eligibility of the item(s) or project(s) for placement on the STATE PRINTING CALENDAR, the schedule of printing jobs to be bid.

For non-contract printing procurements over \$36,000, the agency must consult with the Purchase Bureau Printing Team to ascertain the eligibility of item(s) or project(s) for placement on the STATE PRINTING CALENDAR as a contract item. If deemed ineligible, a requisition (PB-6) will be required.

- M. FURNITURE / CARPET: All furniture and carpet procurements \$1,000 or above must be approved by DPMC.

VI. VIOLATIONS

Should violations of this Circular be verified, pursuant to the authority of N.J.S.A. 52:25-23(c), the Director, DPP, may, by written order, rescind or reduce the level of purchasing authority delegated to the agency. In such event, the department's Executive Officer will be notified.

VII. TRAINING

At the request of the agency, DPA training will be made available by contacting the CCAU at (609) 292-5400 or by fax at (609) 292-5899. Requests or questions can also be made through e-mail at ccau@treas.state.nj.us.



Jignasa Desai-McCleary
Acting Director